

**MEMO ENDORSED**



**THE CITY OF NEW YORK  
LAW DEPARTMENT**

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NEW YORK, NY 10007

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May 15, 2020

**VIA ECF**

Honorable Katherine Polk Failla  
United States District Judge  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

Re: Philip DeBlasio v. Doctor Williams, et al.,  
19 Civ. 201 (KPF)

Your Honor,

I am a Senior Counsel in the Special Federal Litigation Division of the New York City Law Department, and the attorney representing Doctor Erin Williams and New York City Department of Correction Officer Tyrone Simon (“Defendants”) in the above-referenced matter. Defendants write to respectfully request the Court stay discovery, including Defendants’ deadline to respond to Plaintiff’s Interrogatories and Requests for Production of Documents Pursuant to SDNY Local Civil Rule 33.2, pending the resolution of Defendants’ anticipated motion to revoke Plaintiff’s *in forma pauperis* (“IFP”) status and dismiss his complaint.<sup>1, 2</sup>

By way of background, Plaintiff alleges that, on December 21, 2018 at approximately 6:00 p.m., in Anna M. Kross Center’s (“AMKC”) Mode 1, he was verbally harassed by Correction Officer Simon and two John Doe correction officers. (ECF No. 2, at pp. 4.) Plaintiff further alleges that one of the John Doe officers ordered another inmate to attack Plaintiff, a request with which the inmate complied, punching Plaintiff in the back of the head and his face several times. (*Id.*) On January 8, 2019, Plaintiff filed the complaint in this matter. (ECF No. 2.) On February 28, 2020, Defendants filed a pre-motion letter to discuss Defendants’ contemplated motion to revoke Plaintiff’s IFP status, pursuant to the IFP statute, and to dismiss Plaintiff’s complaint. Subsequently, on March 5, 2020, the Court ordered Plaintiff “to respond to [Defendants’] letter on or before March 31, 2020.” (ECF No. 21.) However, to date, Plaintiff has failed to respond.

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<sup>1</sup> Defense counsel has been unable to seek Plaintiff’s consent to the instant motion in light of Plaintiff’s incarceration within a New York State correctional facility.

<sup>2</sup> Defendants’ responses are currently due by May 18, 2020. (ECF No. 16.)

Pursuant to Federal Rule of Civil Procedure 26(c), courts have discretion to stay discovery for good cause pending a motion to dismiss. See Barnes v. Smith, No. 12 Civ. 1916 (PKC) (RLE), 2013 U.S. Dist. LEXIS 12616, at \*1-\*2 (S.D.N.Y. Jan. 17, 2013). “Good cause may be shown where a party has filed a strong dispositive motion.” Id. (internal quotations omitted). Indeed, “a stay of discovery is appropriate . . . where the motion appears to have substantial grounds or . . . does not appear to be without foundation in law.” Johnson v. N.Y. Univ. Sch. of Educ., 205 F.R.D. 433, 434 (S.D.N.Y. 2002). In determining whether to stay discovery, courts consider: “(1) whether defendant has made a strong showing that plaintiff’s claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay. Kanowitz v. Broadridge Fin. Sol., Inc., No. 13-CV-649 (DRH) (AKT), 2014 U.S. Dist. LEXIS 46518, at \*15-\*16 (E.D.N.Y. Mar. 21, 2014).

The factors weigh in favor of granting a stay of discovery. First, as set forth in Defendants’ pre-motion conference letter, Plaintiff’s complaint should be dismissed based on Plaintiff’s accumulation of “three strikes” under the IFP statute and the lack of imminent danger pled in his complaint. (ECF No. 20). Second, Defendants’ motion is fully dispositive; thus, there is a strong chance that the time and resources Defendants would have to expend to engage in discovery during the motion’s pendency would be for naught. Finally, Plaintiff would not be prejudiced by the requested stay, as he would be entitled to proceed with discovery in the event that the Court denies Defendants’ motion. See Spencer Trask Software & Info. Servs. v. RPost Int’l, 206 F.R.D 367, 368 (S.D.N.Y. 2002) (holding that proceeding with discovery while a dispositive motion is pending would be unnecessary, and staying discovery will neither “substantially nor unduly delay the action”). As such, the factors weigh in favor of granting a stay of discovery.

For the foregoing reasons, Defendants respectfully request the Court stay discovery, including Defendants’ deadline to respond to Plaintiff’s Interrogatories and Requests for Production of Documents Pursuant to SDNY Local Civil Rule 33.2, pending the resolution of Defendants’ anticipated motion to revoke Plaintiff’s IFP status and dismiss his complaint. Thank you for your attention to this matter.

Sincerely,

Joshua A. Weiner

Joshua A. Weiner<sup>3</sup>  
Senior Counsel

cc: VIA MAIL<sup>4</sup>  
Philip E. DeBlasio

<sup>3</sup> This case has been assigned to Assistant Corporation Counsel Aaron Davison, who passed the New York State Bar Exam and is presently applying for admission. Mr. Davison is handling this matter under supervision and may be reached at (646) 988-3220 or [adavison@law.nyc.gov](mailto:adavison@law.nyc.gov).

<sup>4</sup> Defense counsel is limited in their access to mail because we are still working from home. Nevertheless, defense counsel anticipates serving this document next week, at which point we will file a certificate of service.

DIN# 19A0070  
Green Haven Correctional Facility  
594 Route 216  
Stormville, New York 12582

Application GRANTED. Discovery in this matter is hereby STAYED.

Further, Plaintiff is reminded that he was ordered to respond to Defendants' letter regarding revoking his *in forma pauperis* status by March 31, 2020. The Court appreciates that due to the COVID-19 pandemic there have been restrictions placed on certain correctional facilities that may have caused delay for Plaintiff in receiving mail and submitting documents to the Court. For that reason, Plaintiff's time to respond to Defendants' letter motion to revoke his *in forma pauperis* status because he has accumulated three strikes under 28 U.S.C. § 1915(g), is hereby EXTENDED to **June 29, 2020**. If the Court does not hear from Plaintiff by that time, it will take Defendants' motion under consideration.

Dated: May 18, 2020  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE

*A copy of this Order was mailed by Chambers to:*

Philip E. DeBlasio  
NYSID: 04489407Y  
DIN No: 19-A-0070  
Green Haven Correctional Facility  
594 Route 216  
Stormville, NY 12582-0010